IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1720 OF 2003

IN

SUIT NO. 1622 OF 2003

Rashid Ahmed Siddiqui ...Plaintiffs.
vs.
Anwar Akhtar Hussain ...Defendants.

A L O N G W I T H

SHOW CAUSE NOTICE NO. 100 OF 2005

IN

NOTICE OF MOTION NO. 1720 OF 2003

IN

SUIT NO. 1622 OF 2003

Rashid Ahmed Siddiqui ...Plaintiffs.
vs.
Anwar Akhtar Hussain ...Defendants.

A.J. Shobhawat, advocate

for the plaintiffs.

Imtiyaz Raibagkar,advocate

for the defendants

S.A. Bhalwal i/by. Vyas and Bhalwal

for ONGC to show cause.

CORAM: S.U. KAMDAR, J.

DATE : 14TH FEBRUARY, 2006.

P.C. :

1. Learned counsel for the defendant states that the defendant will deposit in court a sum of Rs.6 lacs within a period of 12 weeks from today in accordance with Clause 3 of the MOU dated 26.7.2002. Similarly learned counsel for the plaintiff states that he will deposit a sum of Rs.28,630/- in accordance with Clause 3 of the MOU dated 26.7.2002 within a period of four weeks from today. Learned counsel for the plaintiff will also file affidavit disclosing whether : he has received any inflow of funds inrespect of the contracts already executed prior to 26.7.2002 in the firm name of Consolidated Engineering Company.

2. Such an affidavit to be filed within a period of 2 weeks from today and copy thereof to be furnished to the advocate for the defendants.

3. Both the parties will also be at liberty to file accounts inrespect of the contracts already executed and liability if any of the firm incurred by them inrespect of the said executed contracts. Such accounts to be filed within a period of four weeks from today.

4. After the accounts are filed the said accounts will be forwarded to the Chartered Accountant Mr. Vilas Maddi of M/s. Maddi and Co. for the purpose of auditing thereof and ascertaining the actual profit or loss inrespect of the contracts already executed by the parties prior to 26.7.2002 and the amount of profits if any to be distributed between the plaintiff and the defendant thereof. Both the counsels states that sum of Rs.4.98 lacs are lying deposited with ONGC towards the security deposit. As and when

the amount becomes releaseable by the ONGC as per the terms and conditions of contract the ONGC will deposit the same in this court to the credit of the present suit and will not release the same either to the plaintiff or the defendant. After the report is received from the Chartered Accountant determining the liabilities of the firm and the inflow of funds in respect of the said contracts already executed the parties will be at liberty to make necessary applications for disbursal of the said amount including the amount lying deposited in this court pursuant to the present order.

5. It is made clear that the defendant will be at liberty to apply to move this court by taking out appropriate application by way of Notice of Motion if it comes to the notice of the defendant that any amount has been received by the plaintiff inrespect of the orders already executed by the firm prior to 26.7.2002 and if such an application is made then the court will consider the same on its own merits and in

accordance with law. Learned counsel for the defendant further states that he will not use the name of Consolidated Engineering Company inrespect of any of the contracts with any of the parties whatsoever and he will form his own firm and run his own business in his own separate name.

6. Learned counsel for the plaintiff states that in so far as Rs. 6 lacs is concerned which is directed to be deposited in this court there is already an amount lying deposited with the Oriental Bank of Commerce, M.G. Road. The said amount is seized by the order passed by the Metropolitan Magistrate's Court under the complaint filed by the plaintiff. The plaintiff has no objection if the said seizure is lifted and the Oriental Bank of Commerce is directed to deposit the said amount in this court. The amount so deposited will be adjusted against the order of deposit of Rs. 6 lacs. Accordingly Oriental Bank of Commerce is directed to deposit in this court an amount lying with them in the

account of the defendant within a period of two weeks from today irrespective of any seizure order passed by the Metropolitan Magistrate Court.

7. In so far as Show Cause Notice to General Manager, ONGC concerned in the light of the request of the learned counsel for ONGC and in view of tendering an unconditional apology for non-compliance of the order passed by this court, Show cause Notice is discharged. Learned counsel for ONGC assures the court that a sum of Rs. 4.98 lacs will not be released to either the plaintiff or the defendant and if there is any problem in deposit of the said amount ONGC will be at liberty to apply for modification of this order. Motion disposed off accordingly. NO order as to costs.

sd/-

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